Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 13th October, 2005 (Asvina 21, 1927)

SERIES II No. 28

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 27-05-2005 in reference No. C-IT/14/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 15th June, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Appl. No. C-IT/14/97

Shri Hanumant H. Gokernekar,
Kalchawada Arambol,
Pednem Goa. ... Complainant/
/Workman

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Eastwing Bus Terminus,
Panaji-Goa. ... Opponent/
/Employer

Complainant - Represented by Adv. A. Kundaikar.

Opponent- Represented by Adv. Shri C. J. Mane.

Panaji, dated: 27-5-2005.

AWARD

The Complainant (for short, 'Workman') filed the above complaint u/s 33A of the Industrial Disputes Act, 1947 against the dismissal order dated 22-10-96 passed by the Opponent (for short, 'employer').

2. The facts of the case in brief as pleaded by the workman are that the Government of Goa by order dated 23-9-96 bearing No. 28/44/25-Lab/11019 referred the dispute regarding refusal of employment to the workman by the employer w.e.f. 8-5-94 to 29-9-94 for adjudication of this Tribunal. That pursuant to the said reference made by the Government the dispute is pending for adjudication and the said dispute is registered as reference No. IT/45/96. That during the pendency of the said dispute the employer by order dated 22-10-96 dismissed the workman from services. That being aggrieved from the said order of dismissal the workman filed Writ Petition before the Hon'ble High Court of Bombay challenging the dismissal order on the ground that it was in violation of Sec. 33(b) of the Industrial Disputes Act, 1947 and subsequently on 16-1-97 the workman withdrew the said Writ Petition because alternate remedy was available to him. That therefore the workman filed the present complaint u/s 33A of the Industrial Disputes Act, 1947. That on 30-10-95 the workman was issued a charge sheet under clause 28 of the Certified Standing Orders of the employer alleging certain acts of misconduct against him and thereafter an enquiry was held into the said charge sheet. The workman contended that the enquiry conducted against him is not fair and proper and the same is held in total violation of the principles of natural justice and he was not given fair and reasonable opportunity to defend himself in the enquiry. The workman contended that the order of dismissal dated 22-10-96 issued to him is illegal

and the same is liable to be quashed and set aside. The workman prayed that the dismissed order be set aside and the employer be directed to pay to him the back wages from the date of his dismissal.

3. The employer filed the written statement at Exb. 4. The employer stated that the dispute regarding refusal of employment which is the subject matter of the reference No. IT/45/96 and which is pending for disposal before this Tribunal is an individual dispute and not an industrial dispute. The employer stated that the workman was allowed to resume duties w.e.f. 30th September, 1994 pending the disposal of the reference No. IT/45/96. The employer stated that no industrial dispute as defined in the Industrial Disputes Act, 1947 was pending before the Tribunal when the workman was dismissed from service and as such there was no question of violation of Sec. 33 of the Industrial Disputes Act, 1947 by the employer. The employer admitted that the charge sheet dated 30th October, 1995 was issued to the workman and subsequently enquiry was conducted into the said charge sheet. The employer stated that the domestic enquiry was conducted in accordance with the principles of natural justice and the workman fully participated in the said enquiry. The employer stated that the workman was dismissed from service after holding enquiry into the charges levelled against him and further stated that if the enquiry is found to be defective or perverse the employer was to be given an opportunity to decide its action by leading evidence before this Tribunal. The employer denied that there is violation of the provisions of Sec. 33 of the Industrial Disputes Act, 1947 alleged by the workman. The employer prayed that the complaint filed by the workman be dismissed. The workman thereafter filed rejoinder at Exb. 5. The workman denied that the dispute which is pending before the Tribunal in reference No. IT/45/96 is not an industrial dispute. The workman stated that in the conciliation proceedings before the Asst. Labour Commissioner, Panaji, the employer did not raise any objection regarding the maintainability of the dispute. The workman stated that the charges levelled against him in the charge sheet dated 30th October, 1995 are false and frivolous and findings given by the Inquiry Officer as perverse.

4. On the pleadings of the parties following issues were framed at Exb. 6.

1. Whether the Party I proves that the Party II terminated his services in violation of the provisions of Section 33-2(b) of the Industrial Disputes Act, 1947 ?

2. Whether the Party I proves that the domestic enquiry held against him is not fair and proper ?

3. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?

4. Whether the Party I proves that termination of his services by the Party II is illegal and unjustified ?

5. Whether the Party I is entitled to any relief ?

6. What order or Award ?

5. *The issue Nos.* 1, 2 and 3 were treated as preliminary issues as the issue No. 1 pertained to the very maintainability of the complaint and the issue Nos. 2 and 3 pertained to the fairness of the domestic enquiry conducted against the workman and proving of the charges of misconduct against him in the enquiry. The workman as well as the employer led evidence on the said preliminary issues. Thereafter by findings dated 26-2-1999 this Tribunal held that the termination of the service of the workman by the employer vide order dated 22-10-96 is in contravention of Sec. 33-2(b) of the Industrial Disputes Act, 1947 and hence the complaint is maintainable. This Tribunal further held that the domestic enquiry held against the workman is not fair and proper and hence the same was set aside and also held that since the enquiry itself was held to be not fair and proper and is liable to be set aside the question of deciding whether the findings of the enquiry officer are based on evidence on record does not arise. In the circumstances, the issue Nos. 1 and 2 were answered in the affirmative and the issue No. 3 was answered as does not arise. Thus, the issue Nos. 1, 2 and 3 stood disposed of.

6. While deciding the issue No. 1 regarding the violation of the provisions of Sec. 33-(2)(b) of the Industrial Disputes Act, 1947 it was contended on behalf of the workman that if the complaint is held to be maintainable because the order of dismissal is in violation of the provisions of Sec. 33-2(b) of the Industrial Disputes Act, 1947, the order is liable to be set aside and the workman is entitled to reinstatement. This Tribunal however disagreed with the contention of the workman and relying on the judgment of the Supreme Court in the case of M/s. Punjab Breweries Pvt. Ltd., Chandigarh v/s Suresh Chand and another reported in 1978 Lab. I.C, 693 and in the case of Bhavnagar Municipality v/s Alibhai Karimbhai and others reported in 1977 I, LLJ 407 held that even if it is held that there is contravention of Sec. 33 of the Industrial Disputes Act, 1947 the Tribunal has to go further and deal with the merits of the order of dismissal. This Tribunal further held that if the enquiry is held to be not fair and proper and the same is set aside the employer will have to be afforded an opportunity to lead evidence before this Tribunal to

prove the misconduct as the employer in the written statement has prayed that it should be given an opportunity to lead evidence before this Tribunal to justify its action in case the enquiry is found to be defective. Therefore, after it was held that the enquiry conducted against the workman is not fair and proper and hence it was set aside, the opportunity was given to the employer to lead evidence to prove the charges of misconduct against the workman before this Tribunal and consequently additional issue No. 3A was framed as follows:

Issue No. 3A: Whether the Party II proves that the Party I is guilty of the charges of misconduct ?

7. After the said issue No. 3A was framed, the employer as well as the workman led evidence the said issue, as well as on the remaining issues. My findings on the issue No. 3A, and the other remaining issues are as follows:

Issue No. 3A : Does not arise.

Issue No. 4 : In the affirmative.

Issue No. 5 : As per para. 14 below.

Issue No. 6 : As per order below.

REASONS

8. *Issue No. 3A:* This issue pertains to the proving of the charges misconduct against the workman levelled in the charge sheet dated 30-10-95. This issue was framed because it was held by me while deciding the preliminary issue No. 1, 2 and 3 that when the complaint is held to be maintainable, it is to be decided on merits as if it was a reference from the Government under Sec. 10 of the Industrial Disputes Act, 1947 and when the enquiry is set aside on the ground that it is not fair and proper the employer is to be given an opportunity to lead evidence before this Tribunal to prove the charges of misconduct against the workman since the employer had made a request in that behalf. This Tribunal had held so in the findings dated 26-2-1999 relying on the judgments of the Supreme Court in the case of Punjab Breweries Pvt. Ltd., Chandigarh (Supra) and Bhavanagar Municipality (Supra). Accordingly, the employer and the workman led evidence on the above issue No. 3A. However, according to me in view of the judgment of the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. V/s Shri Ram Gopal Sharma and others reported in 2002 I CLR 789, the question of deciding whether the charges of misconduct against the workman are not proved before this Tribunal does not arise once it is held that there is violation of the provisions of Sec. 33 of the Industrial Disputes Act, 1947 and the complaint is held to be maintainable.

9. The entire case law on the scope of Sec. 33(2)(b) and Sec. 33 A of the Industrial Disputes Act, 1947 has been reviewed by the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. (Supra). The Supreme Court in this case considered its earlier decision in the case of Punjab Breweries Pvt. Ltd. (Supra) and held that in this case its earlier decisions in the case of Straw Board Manufacturing Company V/s Govind reported in 1962 Supp. (3) SCR 618 and Tata Iron and Steel Co. Ltd. V/s S. N. Modak reported in 1965 (3) SCR 411 were not considered. The Supreme Court held that the view expressed in Punjab Brewerages case (Supra) is not the correct view on the question which arose before the Supreme Court in the case of Zilla Sahakari Bhoomi Vikas Bank Ltd. (Supra) namely, if the approval is not granted under Sec. 33 (2)(b) of the Industrial Disputes Act, 1947. Whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Sec. 33 (2)(b) would not render the order of dismissal inoperative. As mentioned earlier it was held in Punjab Brewerages case (Supra) that failure to apply for approval under Section 33 (2)(b) would only render the employer liable to punishment under Sec. 31 of the Act and the order of dismissal would not be inoperative. It was further held that mere contravention of Sec. 33 by the employer will not entitled the workman to an order of reinstatement and that the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal. However, the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. (Supra) has held that the above view expressed by it in Punjab Beverages Case (Supra) is not the correct view, and has further held in that case that the view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Sec. 33 A, cannot be accepted. Therefore, in view of the Judgment of the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. (Supra), in the present case after holding that there is contravention of Sec. 33 of the Industrial Disputes Act, 1947 by the employer by not paying to the workman one month's wages at the time of his dismissal from service and not filing approval application before the Industrial Tribunal as required under proviso to Sec. 33 (2)(b) of the Act, there is no question of going into the merits of the order of dismissal and decide whether the misconduct has been proved against the workman or not. As per the judgment of the Supreme Court in the above case the proviso to Sec. 33(2)(b) of the Act is mandatory and if there is contravention of the said proviso, the order of dismissal becomes void and inoperative. This being the

case, I hold that the question of deciding the issue whether the workman is guilty of the charges of misconduct does not arise. I, therefore answer the issue No. 3A accordingly.

10. *Issue No. 4:* The workman was dismissed from service vide dismissal order dated 22-10-1996. The said order has been produced at Exb. W-9. The workman has contended that the said dismissal order is illegal and unjustified. While deciding the issue No. 1 it has been held by me that on the date when the services of the workman were terminated, that is, when he was dismissed from service, industrial dispute was pending before this Tribunal being Ref. No. IT/45/96. The workman was dismissed from service because according to the employer the charges of misconduct levelled against him in the charge sheet dated 30-10-95 were proved against him in the enquiry. The dispute which was pending before this Tribunal in Ref. No. IT/45/96 was as regards refusal of employment to the workman whereas the misconduct with which he workman was charged was for having committed various irregularities while he was discharging his duties as a conductor on route, Panaji to Bijapur on vehicle No GA-01-X-0110 on 16-9-95. Thus the dismissal from service was for misconduct which was not connected with the dispute in Ref. No. IT/45/96. It was held by me that the workman was not paid one month's wages at the time of his dismissal from service and also approval application was not filed by the employer before the Tribunal for approving the action taken by it. Since the dismissal of the workman by the employer was for misconduct which was not connected with the industrial dispute which was pending before this Tribunal, Sec. 33(2)(b) of the Industrial Disputes Act, 1947 was attracted and as per the proviso to the said section the employer was liable to pay to the workman one month's wages and file approval application before the Tribunal at the time of dismissing the workman from service. Since the employer failed to do so, there is contravention of the provision of Sec. 33 (2)(b) of the Industrial Disputes Act, 1947 from the employer. Now the question is whether the action of the employer of dismissing the workman from service becomes illegal for not complying with the proviso to Sec. 33(2)(b) of the Industrial Disputes Act, 1947.

11. The issue involved above has been decided by the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. (supra). In this case the question that arose was whether failure to make application under Sec. 33(2)(b) would not render the order of dismissal inoperative. The Supreme Court in para 13 of the judgment held that the proviso to Section 33(2)(b) is mandatory and the conditions contained in the said proviso are to be essentially complied with. In para. 13 of the judgment the Supreme Court held as follows:

> "..... If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33 (2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization, and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void, or inoperative, the employer may with impugnity discharge or dismiss a workman."

12. Further in para. 15 of the said judgment the Supreme Court held that not making an application under section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to section 33(2)(b) and an employer who does not make an application under sec. 33(2)(b) or withdraw the same once made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. The Supreme Court further held that adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. The Supreme Court also held that an employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on its merits, to take a position that such order is not operative or void till it is set aside under Sec. 33A. not withstanding the contravention

of Sec. 33 (2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Sec. 33 A or to raise another industrial dispute or to make a complaint under Sec. 31(1). It held that such an approach destroys the protection specifically expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

13. From the above judgment of the Supreme Court it is therefore clear that complying with the proviso to Sec. 33 (2)(b) of the Industrial Disputes Act, 1947 is mandatory for the employer if he wants to discharge or dismiss a workman during the pendency of the industrial dispute for misconduct not connected with the dispute, and failure to comply with the proviso renders the order of discharge or dismissal void or inoperative. In the present case, as mentioned earlier, the employer dismissed the workman from service during the pendency of the industrial dispute without complying with the proviso Sec. 33 (2)(b) of the Industrial Disputes Act, 1947. Therefore as per the law laid down by the Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. (Supra) the dismissal order is void or inoperative. Once the dismissal is held to be void or inoperative, it becomes illegal. I therefore hold that the workman has succeeded in proving that the termination of his service by the employer is illegal and unjustified. I therefore answer the issue No. 4 in the affirmative.

14. *Issue No. 5:* This issue pertains to the relief to be granted to the workman. It has been held by me that the dismissal order passed by the employer against the workman is void or inoperative and consequently, it is illegal and unjustified. Now the question is what relief should be granted to the workman. The Bombay High Court in the case of Sayyad Anwar V/s Divisional Controller MSRTC, Aurangabad and others, reported in 2000 (2) Bom. L.C. 388 has held that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages and continuity of service must follow unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart form the aforesaid normal rule. The Supreme Court in the case of Jaipur Zilla Sahakari Bhoomi Bank Ltd. (Supra) in para 14 of its judgment has held that where an application is made under Sec. 33 (2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bonafide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc., and if the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The Supreme Court further held that if approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available, and that there is no need of a separate or specific order for his reinstatement. In the present case no approval application was made by the employer and there was no compliance of the proviso to Sec. 33(2) (b) of the Industrial Disputes Act, 1947. The dismissal order passed against the workman has been held to be void or inoperative by me, and as such it has to be deemed that the workman continued to be in service inspite of the dismissal order dated 22-10-1996. However, in my view, in the present case a specific reinstatement order is required to be passed as the present proceedings are under Sec. 33A of the Industrial Disputes Act, 1947 and as per Sec. 33A(b) the complaint is to be adjudicated as if it is a dispute referred or pending before the Tribunal and the Award is to be passed and submitted to the appropriate Government. In the circumstances, I hold that the workman is entitled to reinstatement in service with full back wages and continuity of service and other consequential benefits.

I, therefore pass the following order.

ORDER

It is hereby held that the action of M/s. Kadamba Transport Corporation Limited, Panaji-Goa, in dismissing the workman Shri Hanumant H. Gokarnekar, by order dated 22-10-1996 with immediate effect is illegal and unjustified. The workman Shri Hanumant H. Gokernekar is ordered to be reinstated in service with full back wages, continuity of service and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 20-05-2005 in reference No. I1/45/96 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 15th June, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/45/96

Shri Hanumant Hari Gokarnekar,
Khalchawada Arambol, ... Workman/Part I
Pednem, Goa.

V/s

Managing Director, ... Employer/Party II
M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa.

Workmen/Part I - Represented by Adv. Shri A. Kundaikar.

Employer/Party II - Represented by Adv. Shri C. J. Mane.

Panaji, dated 20-5-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 23-9-1996 bearing No. 28-44-95--Lab referred the following dispute for adjudication by this Tribunal.

"(1) Whether the action of the management of M/s. Kadamba Transport Corporation Ltd., Panaji, in refusing employment to Shri Hanumant Gokarnekar, Conductor, with effect from 8-5-1994 to 29-9-1994 is legal and justified ?

(2) If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/45/96 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (for short, 'employer') as a Conductor and presently he is posted at Porvorim depot. That by letter dated 5-5-94 he requested for two days sick leave on 5th and 6th May, 2004 and on the expiry of the sick leave he approached the Traffic Inspector, Shri A. D. Dessai along with the joining report and ESI medical certificate on 8-5-94 as 7-5-94 was his weekly off. That Mr. A. D. Dessai refused to permit the workman to join the duties and instructed him to approach the depot manager and when he met the depot manager - Mr. Ghate, he told the workman to report on 10th May as he wanted to check the position and circumstances leading to the refusal of employment. That on 10th May the workman reported for duties but the depot manager was insisting that the workman should give apology letter and stated that unless it is given he shall not allow him to join the duties. That since the employer had failed to permit the workman to discharge his duties, he approached the Labour Commissioner who held the conciliation proceedings and since there was no possibility of settlement, failure report was submitted to the Government. That in the conciliation proceeding, at the intervention of the Asst. Labour Commissioner, the workman was permitted to join the duties from 30-9-94 from 4.00 noon after complying with the necessary formalities along with the joining report. That on 30-9-94 the workman approached the depot manager and signed the various documents so as to enable him to resume his duties. That after the workman joined the duties he was served with a charge sheet dated 30-9-94, and for the first time on 30-9-94 the workman learnt that allegations against him are pertaining to the strike, which was called by the Drivers and Allied Workers Union, which was prevalent in the corporation. That the workman replied to the charge sheet on 12-10-94 denying the allegations made against him and since it was incumbent to join the employer to hold the enquiry it was not held even though two years had lapsed. The workman contended that the employer has illegally restrained him from discharging his duties without any sufficient reasons. He contended that the refusal of employment to him is illegal, malafide and unjustified and it is an act of unfair labour practice. The workman contended that since the refusal of employment to him is illegal and unjustified he is entitled to full back wages from 8-5-94 till 30-9-94 with interest @ 12% per annum and continuity in service, benefits and other privileges attached to the past.

3. The employer filed written statement at Exb. 6. The employer denied that the workman is presently posted at Porvorim depot and stated that he has been dismissed from service by order dated 22-10-96 for misappropriation of the legitimate revenue of the corporation. The employer stated that the workman did not report for duty from 8-5-94 to 30-9-94 and there is no illegal refusal of employment to him. The employer stated that the dispute referred is an individual dispute and it is not an industrial dispute and as such the reference is not maintainable. The employer denied that the workman was sick and that he addressed a letter dated 5-5-94 requesting for leave on 5th and 6th May, 94. The employer denied that the workman reported to traffic inspector on 8-5-94 along with the joining report and medical certificate and further stated that the workman was continuously absent from 1-5-94 and as such he was

not entitled to weekly off on 7-5-94. The employer denied that the workman approached the Traffic Inspector, Mr. A. D. Dessai on 8-5-94 and that he refused to give permission to the workman to join duty. The employer stated that for the first time the workman approached the Labour Commissioner and the employer stated before the Labour Commissioner that the workman never reported for duty at any time and in the conciliation proceedings it was agreed that the workman can join at any time and accordingly the workman joined the duties on 30-9-94. The employer stated that the workman unauthorisedly remained absent from May' 1994 to 30-9-94 and therefore a charge sheet dated 30-9-94 was issued to him. The employer admitted that the workman submitted reply on 12-10-94 and the domestic enquiry was not held because the conciliation proceedings were to continue after the workman joined duty as contended by the conciliation officer on 29-9-94. The employer stated that since the workman had not reported for duty the question of restraining him from joining the duty or illegally refusing employment to him did not arise. The employer stated that since there is no refusal of employment to the workman he is not entitled to full back wages for his unauthorized period of absence from 8-5-94 to 30-9-94 or any other relief. The employer prayed that the reference made by the Government be answered in the negative. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties following issues were framed.

1. Whether the Party I proves that the Party II illegally and without justification refused employment to him from 8-5-94 to 29-9-94 ?
2. Whether the Party II proves that the Party I remained unauthorisedly absent from 8-5-94 to 30-9-94 ?
3. Whether the Party II proves that the dispute referred by the Government is an individual dispute and not an industrial dispute and hence reference is not maintainable ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: In the affirmative.
Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: As per order below.

REASONS

6. *Issue No. 3:* This issue is taken up first because it touches the very maintainability of the reference. The employer has taken the defence that the dispute which has been referred by the Government for adjudication is an individual dispute and not an industrial dispute. It is well settled that what can be referred to an Industrial Tribunal for adjudication is an industrial dispute and not an individual dispute Sec. 2A. of the Industrial Disputes Act, 1947 deems certain disputes as industrial disputes and these disputes may be raised by the workman himself and he need not raise the same through the union of which he is the member. Sec. 2 A of the Industrial Disputes Act, 1947 reads as follows:

> 2A: "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any union is a party to the dispute."

7. The present dispute which has been referred for adjudication is regarding refusal of employment to the workman by the employer from 8-5-94 to 25-9-94. It is the contention of the workman that he has been refused employment by the employer illegally and without any justification for the period from 8-5-94 to 29-9-94. In my view, if a person was in employment and subsequently he is refused employment it is another form of termination of service, though it is not dismissal, discharge or retrenchment. Refusal of employment puts the service of the workman to an end, which in other words means the services stand terminated. Therefore in my view, refusal of employment would fall within the meaning of the term "otherwise terminates" services of an individual workman, and as such the dispute as regards refusal of employment would be an industrial dispute within the meaning of Sec. 2 A of the Industrial Disputes Act, 1947, and it is not an individual dispute as contended by the employer. I therefore hold that, the employer has failed to prove that the dispute referred by the Government is an individual dispute and not an industrial dispute. This being the case the reference is maintainable. I therefore answer the issue No. 3 in the negative.

8. *Issue Nos. 1 & 2:* Both these issues are taken up together because they are interrelated. It is the contention of the workman that he was sick on 5th May, 1994 and 6th May, 1994 and since 7th May, 1994 was his weekly off he reported for duty on 8th May, 1994 but, he was not allowed to report for work and that thereafter also whenever he reported for work as per the instructions from the depot manager or the general

manager, he was not allowed to do so and only in the conciliation proceedings held by the Dy. Labour Commissioner, Panaji, it was agreed that he would be allowed to report for duty from 30th September, 1994 which he accordingly did. Thus, according to the workman he was illegally refused employment by the employer from 8th May, 1994 to 29th September, 1994. Whereas it is the case of the employer that there was no refusal of employment to the workman but it is the workman who unauthorisedly absented himself from work from 8th May, 1994 to 30th September, 1994.

9. In this case the workman as well as the employer have led evidence. The workman has examined himself and one witness by name Mr. Sadat Muzawar, whereas the employer has examined three witnesses, namely, Asst. Traffic Inspector, Mr. Ajit Dessai, the Depot Manager, Mr. Antonio Carvalho and the Depot Manager, Mr. Sanjay Ghate. The workman in his deposition stated that he fell sick on 5th May, 1994 and he sent the information regarding his sickness by letter dated 5th May, 1994, which was sent by Registered post but the same was returned to him with remark "unclaimed". He has produced the said letter, which was returned to by the post authorities at Exb. W-2. He has stated that in the said letter he had stated that he was not able to attend to his duties on 5th May and 6th May. He has stated that on 8th May, 1994 he reported for work and met the Traffic Inspector who asked him to meet the Dy. Depot Manager and who in turn again asked him to meet the Traffic Inspector. He has stated that the Traffic Inspector told him to come on the next day and that accordingly on 9-5-94 he reported for work and met the Depot Manager who asked him to meet the General Manager and that when he met the General Manager he asked him to come after 4 days. He has further stated that he met the General Manager after 4 days who told him that he would ask the Depot manager to allow him to report for duties but when he met the Depot Manager, he did not allow him to do so. In his cross-examination he stated that on 8-5-94 the Traffic Inspector, Mr. A.D. Dessai was on duty. He denied the suggestions put to him that on 8-5-94 he did not meet the Traffic Inspector, Mr. A. D. Dessai; that his statement that Mr. A. D. Dessai did not allow him to report for work and asked him to come on the next day is false; that he did not meet the Depot Manager on 9-5-94; that his statement that on 9-5-94 the Depot Manager asked him to meet the General Manager is false and also his statement that he met the General Manager after 4 days is false; that his statement that the General Manager told him that he would phone to the Depot Manager and ask him to allow him to report for duty is false. He admitted that he does not have any evidence to prove that on 8-5-94 he met the Traffic Inspector and on 9-5-94 he met the Depot Manager. In support of his case, the workman has examined Mr. Sadat Muzawar. He has stated that in May, 94 he was working at Porvorim depot as a Conductor. He stated that on 8-5-94 he returned to the Porvorim depot at about 2 p.m. after finishing his report, and at that time he saw the workman standing near the duty allocation office, which is adjacent to the office of the Cashier. He stated that Mr. A. D. Dessai told the Duty Allocation Officer not to allow the workman to report for duty and told the workman to leave the place. He stated that he told the workman to approach the Depot Manager. He stated that on 9-5-94 he reported for duty at 9.00 a.m. and that the workman was present at the depot. He stated that Mr. A. D. Dessai told the workman that he will not be allowed to report for work and that he should go home, and that he advised the workman to file a case against the employer. In his cross-examination, he stated that he does not remember who else were present at the duty allocation office besides the workman on 9-5-94. He stated that his services were terminated on 24-5-96 and his dispute regarding termination of his service is pending before this Tribunal. He denied the suggestion that the workman was not present at the Porvorim depot on 8-5-94 and 9-5-94. He denied the suggestion that Mr. A. D. Dessai never told that the workman should not be allowed to report for work either on 8-5-94 or on 9-5-94.

The employer has examined Mr. A. D. Dessai who was working as Traffic Inspector in May, 1994 at the Porvorim Depot. He stated in his deposition that on 8-5-94 he was on duty and that he did not meet workman as he was absent and that he did not meet him on the subsequent date or thereafter. In his cross examination he stated that if an employee remains absent, he has to submit the joining report to the Traffic Inspector and if he remains absent on account of sickness, he has to submit the fitness certificate at the time of joining the duty. He denied the suggestion that on 8-5-94 the workman reported to him along with the fitness certificate for joining duties or that he told him to join the duties after two days or that the workman reported for duties after two days and he told him to report to the Depot Manager. He denied the suggestion that the workman was not absent on 8-5-94. The employer's other witness Mr. Antonio Carvalho stated in his deposition that in the year 1994 he was the Depot Manager at Porvorim, and that he was on duty on 9-5-94, and that he did not meet the workman on that date. He stated that he worked at the depot till about 20-7-94 and during the period 9-5-94 to 29-6-94 he did not meet the workman at any time. In his cross examination, he denied the suggestion that 9-5-94 the workman had approached him, at the Porvorim depot or that between the period 9-5-94 to 29-6-94 the workman had approached him at the Porvorim depot. He stated if an employee remains absent for more than a month, the same is informed to the Personnel Department.

10. From the above evidence which is discussed above it has come on record that the workman has himself

admitted that he has no evidence to prove that on 8-5-94 he met the Traffic Inspector and on 9-5-94 he met the Depot Manager. There is also no evidence to prove that he met the General Manager as per the instructions from the Depot Manager. The workman has stated that he was sick on 5-4-94 and 6-5-94 and that since 7-5-94 was his weekly off he reported for duty on 8-5-94. He has stated that he had informed about his sickness vide Registered A. D. letter dated 5-5-94 but the same was returned with remark "unclaimed". He has produced the said letter at Exb. W-2. Thus, according to the workman himself he was absent on 5-5-94 and 6-5-94 because of his sickness. The employer's witness Shri Ajit Dessai has stated in his evidence that is, in his cross examination that if an employee remains absent he has to submit his joining report to the Traffic Inspector and if remains absent on account of his sickness he has to submit the fitness certificate at the time of joining the duty. This procedure is neither denied nor disputed by the workman. There is no evidence to prove that the workman had submitted his joining report to the Traffic Inspector on 8-5-94, when according to him he reported for duties, nor there is evidence that he had submitted the fitness certificate at the time of joining the duties on 8-5-94. In fact, the workman has not stated in his evidence that he had submitted his joining report along with the fitness certificate to the Traffic Inspector on 8-5-94. The workman has tried to bring in the evidence through the witness Shri Sadat Muzawar. However, his evidence cannot be believed for more than one reason. He has stated in his deposition that on 8-5-94 he finished his duty at about 2 p.m. and he saw the workman standing near the duty allocation office when he had gone to the office of the Cashier to submit his report. He has stated that Mr. A. D. Dessai, the Asst. Traffic Superintendent told the Duty Allocation Officer not to allow the workman to report for duty and told the workman to leave the place. He has stated that he advised the workman to approach the Depot Manager. He has stated that on 9-5-94 he reported for duty at 9.00 a.m. and the workman was present at the depot. He has stated that Shri A. D. Dessai told the workman that he will not be allowed to report for work and that he should go home, and that he advised the workman to file a case against the workman. The above statements of the witness Mr. Muzawar do not corroborate the statements made by the workman in his evidence. The workman has not stated in his evidence that either on 8-5-94 or on 9-5-94 he met the witness Mr. Sadat Muzawar at the Porvorim Depot. He did not state that he was advised by Mr. Muzawar to meet the Depot Manager or to file a case against the employer. It is not the case of the workman that he reported for duty on 8-5-94 at 2.00 p.m. and that when he was standing at the duty allocation office the Traffic Inspector, Mr. Dessai told the duty allocation officer not to allow the workman to report for work and told him to leave the place. It is his case that he met the Traffic Inspector directly on 8-5-94 and he told him to meet the Dy. Depot Manager and further that when he met the Traffic Inspector again at the instructions from the Dy. Depot Manager, he did not allow him to report for work and asked him to come on the next day. It is further the case of the workman that on 9-5-94 he met the Depot Manager who told him to meet the General Manager. He did not tell the workman that he will not allow him to report for work and that he should go home. Thus, it can be seen that the evidence of Mr. Sadat Muzawar as regards the incident on 8-5-94 and 9-5-94 is full of contradiction and contrary to the statements made by the workman in his evidence. More importantly the workman near stated in his evidence that Mr. Sadat Muzawar was present when he was not allowed to report for work on 8-5-94 and 9-5-94. Therefore the evidence of Mr. Sadat Muzawar cannot be believed and accepted. It has come in the evidence of Mr. Sadat Muzawar that he was also working as a Conductor with the employer and he was dismissed from service. He stated in his cross-examination that his services were terminated on 24-5-96 and the dispute about the termination of his service is pending before this Tribunal. Therefore, from the evidence given by Mr. Muzawar the only reasonable inference which can be drawn is that he has given the evidence in favour of the workman only because he has grudge against the employer because his services were terminated and his dispute was pending before this Tribunal. Thus, from the evidence which is discussed above there is no evidence to prove that the workman had reported for duty on 8-5-94 and 9-5-94 and he was not allowed to do so. The statements made by the workman as regards the incident on 8-5-94 and 9-5-94 are not supported by any evidence.

11. If according to the workman, he was refused employment by the employer on 8-5-94 and 9-5-94 when he had gone to report for duty, he should have immediately made the complaint to the Depot Manager or to the General Manager or to any other higher authority. In his deposition he never stated that he made the complaint dated 16-5-94 to the Managing Director. It is for the first time he made this statement in his cross-examination and produced the copy of the letter at Exb. W-9. He however, admitted that he has no evidence to prove that the original of the said letter was received by the Managing Director. Though in the cross-examination of the workman the employer did not admit the receipt of the said letter, the letter dated 16-6-94 produced by the employer itself at Exb. E-2 which is also produced by the workman at Exb. W-10 shows that the employer has admitted the receipt of the letter dated 16-5-94 from the workman. In this letter the workman has stated about the facts when he reported for duty on 8-5-94. He did not state that he reported for duty on 9-5-94 also and he was not allowed to join duties. In fact, the pleadings made by the workman in his statement of claim are contrary to the statements made by him in his evidence. In the claim statement at para 6 the workman has stated that on 8-5-94 when he

met the Depot Manager-Shri S.C. Ghate, he told him to report on 10th May as he wanted to check the position and that accordingly he met the Depot Manager on 10th May, and further that the Depot Manager insisted that he should give apology letter and unless it is done he will not be allowed to join the duties. Therefore the statement of the workman in his evidence and that of his witness Mr. Sadat Muzawar in his evidence that the workman reported for duty again on 9th May, 1994 is false, and it is contrary to the pleadings. Further the employer has examined Mr. S. L. Ghate. He has stated that he was working with the employer as a Depot Manager at Margao in May, 1994 and that he was transferred to Porvorim Depot in July, 1994. This statement of Mr. Ghate has not been disputed nor denied by the workman. This also proves that statement of the workman in his evidence that on 8th May, 1994 and on 9th May, 1994, he met the Depot Manager, Mr. S. L. Ghate is false. In pursuance to the letter of the workman dated 16-5-94 Exb. W-9, by letter dated 16-6-94 Exb. W-10/E-2 the workman was directed to report at the Porvorim depot immediately. The workman has stated in his cross-examination that accordingly he reported for duty but he was not allowed to do so. It is pertinent to note that the workman has not stated in his evidence on which date he reported for duty after the receipt of the letter dated 16-6-94. He has admitted that he has no documentary evidence to prove that he was not allowed to report for duty at Porvorim depot. The Depot Manager, Mr. Antonio Carvalho has stated in his evidence that he was working as Depot Manager at Porvorim in the year 1994 and that he worked there till 20th July, 1994. He has further stated that during the period 9-5-94 to 29-6-94 he never met the workman at the Porvorim depot. Mr. S. L. Ghate who was the Porvorim Depot Manager from July, 1994 after Mr. Antonio Carvalho was transferred to Margao depot has stated that the Depot Manager at Porvorim had written a letter dated 7-7-94 to the Personnel Department informing that the workman had not joined the duties. The said letter has been produced at Exb. E-3. This letter proves that the workman had not reported for duties inspite of the letter dated 16-6-94 from the employer. The workman has produced the letter dated 1-7-94 at Exb. W-3 written by him to the Labour Commissioner. In this letter the workman had complained that he had reported for duty on 8th May, 1994 and 9th May, 1994 and on various occasions subsequently but he was not allowed to report for work, and thus he was refused employment. He has also produced the copy of the minutes of the conciliation proceeding dated 29-9-94 at Exb. W 4 held by the Dy. Labour Commissioner. These minutes show that the Conciliation Officer had discussed in detail the matter regarding the refusal of employment and perused the correspondence. The employer had taken the defence before the Conciliation Officer also that the workman was not refused employment but he had not reported for work. As mentioned earlier no evidence has been produced by the workman to prove that he had reported for duty on 8th May, 1994, 9th May, 1994 or on any other date subsequently and submitted his joining report along with fitness certificate since, it is his case that he was absent on 5th May, 1994 and 6th May, 1994 on account of sickness. In fact, the workman himself has admitted in his evidence that he has no evidence to prove that he was not allowed to report for duty on 8th May, 1994 and 9th May, 1994 and he has also no documentary evidence to prove that he was not allowed to report for duty at Porvorim depot after he received the letter dated 16-6-94 Exb. W-10/E-2 from the Personnel Manager asking him to report for work immediately. In my view, simply making allegations in the letters to the Managing Director and to the Labour Commissioner that he is not being allowed to report for work is not enough in the absence of any evidence from the workman that he had infact reported for duty and but he was not allowed to report for work. The workman has produced the judgment of the labour court dated 18-4-96 passed in case No. LCC/6 94 at Exb. W-8. In my view, this judgment of the labour court is not relevant for the present case, because the issue involved in the said case was regarding the workman's entitlement for the wages for the period 25-4-94 to 4-5-94 and the labour court held that the workman was entitled to the wages for the said period. In the present case the issue involved is whether the workman was refused employment from 8th May, 1994 till 29-9-94. Thus the period prior to 8th May, 1994 is not in issue in the present case. Also whether the charge sheet dated 30-9-94 issued to the workman is legal or illegal or whether the enquiry should have been held in respect of the said charge sheet has no relevance in the present case. The said issues are entirely separate issues and outside the scope of the present reference. In my view the workman has failed to prove that he reported for duty on 8th May, 1994 or at any time thereafter and he was refused employment by the employer from 8 5-94 to 29-9-94. Once the workman has failed to prove that he had reported for duty but he was refused employment, the only reasonable inference is that the workmen remained absent from 8th May, 1994 and the same absence becomes unauthorized and the contention of the employer in this respect is liable to be believed and accepted which is supported by the internal correspondence dated 10-6-94, 16-6-94 and 7-7-94 produced by the employer at Exb.E-1, E-2 and E-3 respectively. The workman has tried to suggest to the employer's witness Shri Sanjay Ghate that the letters Exb.E-1, E-2 and E-3 are manufactured by the office of the employer which suggestion is denied by him. The letters carry the outward number and the letter dated 10-6-94 Exb.E-1 and 7-7-94 Exb.E-3 written by the Depot Manager to the Personnel Manager carry the inward stamp of the Personnel Department mentioning the inward number and the date on which the said letters were received. Therefore there is nothing to doubt about the genuineness of the said letters. Further, the workman has also taken the defence that the letter dated 16-6-94

Exb.E-2 is manufactured by the office of the employer. This letter is written by the Personnel Manager to the workman asking him to report for work immediately. The workman himself has produced the original of the said letter at Exb. W-10. Therefore the contention of the workman that the said letter is manufactured is absolutely fallacious. In the light of what is discussed above, I hold that the workman has failed to prove that he was refused employment by the employer from 8-5-94 to 29-9-94. Admittedly, the workman was not on duty from 8-5-94 to 29-9-94. Once the workman has failed to prove that he was refused employment during the above said period, the absence of the workman from duty during the above said period becomes nothing but unauthorized. I therefore hold that the employer has succeeded in proving that the workman remained unauthorisedly absent from 8-5-94 to 29-9-94. Hence, I answer the issue No. 1 in the negative and the issue No. 2 in the affirmative.

12. *Issue No. 4:* This issue pertains to the relief to be granted to the workman. The question of granting any relief to the workman would have arisen if it was held that the workman was illegally refused employment by the employer from 8-5-94 to 29-9-94. However, it has been held by me while deciding the issue Nos. 1 and 2 that the workman has failed to prove that he was refused employment by the employer from 8-5-94 and it has been further held by me that the employer has succeeded improving that the workman remained unauthorisedly absent from 8-5-94 to 29-9-94. This being the case the question of granting any relief to the workman does not arise. I therefore hold that the workman is not entitled to any relief and hence answer the issue No. 4 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that there is no refusal of employment to the workman Shri Hanumant Gokarnekar by the management of M/s. Kadamba Transport Ltd., Panaji, from 8-5-94 to 29-9-94. It is hereby further held that the workman Shri Hanumant Gokarnekar is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-06-2005 in reference No. IT/73/92 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 20th June, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/73/92

Workmen Rep. by
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Gr. Fl.,
Khadappa Band,
Ponda-Goa. ... Workman/Party I

V/s

M/s. Prayag Rubber Pvt. Ltd.,
Sancoale Industrial Estate,
Zuarinagar Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri P. B. Devari.

Employer/Party II - Represented by Adv. Shri B. G. Kamat.

Panaji, dated: 13-6-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 3-11-1992 bearing No. 28/48/92-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the following 16 workmen are entitled to full wages for the period from 29-4-91 to 6-5-92, a period during which the employer had suspended operations in the factory ?

1. Shri Pundalik Gawde
2. Shri Tukaram Javir
3. Shri Ragunath Talekar
4. Shri Krishna Thakur
5. Shri Tanaji Hipperkar
6. Shri Ravikant Pai
7. Shri Ramchandra Gawde
8. Shri Suresh Malavikar
9. Shri Rajendra Devenkar
10. Shri Balaji Auchare
11. Shri Datta Prasad Naik
12. Shri Narayan Patil
13. Shri Anand Kadam
14. Shri Shahji Gaikwad
15. Shri Anil Kadam
16. Shri Shankar Gaikwad

Whether the action of the management of M/s. Prayag Rubber Pvt. Ltd., in refusing employment

to above 16 workmen with effect from 7-5-92 amounts to termination of services and if so, whether their demand for re-employment or for continuity of services is legal and justified ?

If the answer to (2) above is in negative, what relief the workmen are entitled to ?

2. On receipt of the reference a case was registered under No. IT/73/92 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "union") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union ate that the 16 workmen (for short, 'workmen') whose names are mentioned in the order of reference were working with the Employer/Party II (for short, "employer") since the year 1985 in its factory situated at Sancoale Industrial Estate. That the employer is a partnership firm engaged in manufacturing rubber products such as tubes, sales etc. That the employer stopped production activities without giving notice and no wages were paid to the workmen for the period 29-4-91 to 6-5-92. That the employer re-started production from 7-5-92 but refused employment to the workmen which amounted to termination of their services. That the workmen were not paid their legal dues at the time of refusal of employment nor they were issued any charge sheet nor any enquiry was held against him. The Union claimed that suspension of work by the employer without giving wages from 29-4-91 to 6-5-92 is illegal as also termination of their service. The union therefore claimed that the workmen are entitled to wages for the period 29-4-91 to 6-5-92 and they are also entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer denied that the union namely, Gomantak Mazdoor Sangh has locus standi on the representative character to sponsor the dispute so as to invest it with the status of an industrial dispute. The employer denied that the workmen authorised the union at the time or before the reference to represent or espouse their cause by raising industrial dispute. The employer stated that in view of the above the reference made by the Government is illegal, invalid and not maintainable and hence is liable to be rejected. Without prejudice to the above contentions the employer denied that it is a partnership concern and stated that it is a company registered under Company's Act, 1956 and that till September, 1993 it was engaged in the business of manufacturing auto tire tubes at its factory at Sancoale Industrial Estate and the factory has been closed from June, 1994. The employer stated that it had employed 24 workers comprising of permanent, temporary and casual workers and sometimes in the year 1988, 8 workers out of the said 24 workers joined Goa Trade & Commercial Workers Union who submitted charter of demands and on refusing to concede to the said demands a dispute was referred to the Tribunal which was registered under No. IT/90/89 and the said dispute was settled under settlement dated 9th April, 1990 and consent award was passed by the Tribunal dated 3rd May, 1990 in terms of the said settlement which was to be operative till 31-10-91. The employer stated that inspite of the settlement the said 8 workers at the instigation of Goa Trade & Commercial Workers Union made concerted attempts to deliberately reduce productivity, coerce the employer to yield in to give up its right and to abrogate its managerial functions in breach and disregard to establish and accepted practices under the notion of workers unity and to show the strength to pressurise other workers to join the said union. The employer stated that the said 8 workers resorted to strike from 29-4-91 without notice and obstructed normal work as well as removal of finished goods from the factory resulting into tense atmosphere in the working of the factory in a peaceful and normal manner. The employer stated that in the above circumstances a notice was displayed on the notice board suspending the entire work from 29-4-91 and directing all the workmen not to remain present in the factory till strike was withdrawn as the existing disturbed conditions posed serious threats to the non striking workers and employer's property. The employer stated that the services of the 3 workers namely, Anil Kadam, Shahji Gaikwad and Shankar Gaikwad were terminated from 1-5-91 and the services of the workmen Datta Prasad Naik, Narayan Patil, Rajendra Devenkar, Suresh Malavikar, Ramchandra Gawde, Balaji Auchare and Anand Kadam were terminated from 31-10-91 by paying notice pay, compensation and other dues. The employer stated that the suspension continued from 29-4-91 to 6-5-92 and after the striking workers approached the employer for review of the situation and assured for peaceful, discipline and normal working, the employer decided to commence operations from 7-5-92. The employer denied that any workman was refused employment on resumption of work from 7-5-92 and stated that the workmen Pundalik Gawde, Tukaram Javir, Ragunath Talekar, Krishna Thakur, Tanaji Hipperkar, and Ravikant Pai along with the other workers were asked to report for work vide notice dated 29-4-92. The employer stated that on resumption of work the Bankers of the employer having regard to the huge financial losses refused to give further accommodation and since the hope for regaining market for its product was found not at all possible in the near future, the employer was forced to stop production activities from 14th Sept., 1993 and closed the establishment from 20th June, 1994 and services of all the workmen were terminated from 21st June, 1994 by paying them legal dues. The employer denied that the workmen are entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether Party I proves that it is the representative Union and has the authority to espouse the cause of the workmen named in the reference ?

2. Whether Party I proves that Party II illegally suspended the operations during the period

29-4-91 to 6-5-92 and hence the workmen named in the reference are entitled to full wages for the said period ?

3. Whether Party I proves that the action of Party II in terminating the services of the workmen named in the reference w.e.f. 7-5-1992 is illegal and unjustified ?

4. Whether Party II proves that its establishment is permanently closed w.e.f. June, 1994 ?

5. Whether the workmen are entitled to any relief ?

6. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: Does not arise.
Issue No. 3: Does not arise.
Issue No. 4: Does not arise.
Issue No. 5: In the negative.
Issue No. 6: As per order below.

REASONS

6. *Issue No. 1:* Since the employer had denied that the union is the representative union of the workers in the establishment of the employer and also that the said union had no authority to espouse the cause of the workmen named in the reference the burden was cast on the union to prove that it is the representative union and it has the authority to espouse the dispute on behalf of the workmen. Adv. Shri Devari, representing the union submitted that the union has examined its General Secretary Shri Puti Goankar as well as one workman. He submitted that the union has produced the receipt book at Exb. E-1 which shows that the 16 workmen who are the parties to the present reference are the members of the Union since the year 1990. He submitted that the employer's witness Mr. Sandeep Sardessai has admitted in his evidence that out of the 24 workmen who were working with the employer, 16 workers had become the members of the Gomantak Mazdoor Sangh. He submitted that substantial number of workmen of employer's establishment had become the members of the union and the employer had participated in the conciliation proceedings held by the conciliation officer without raising any dispute that the union has no authority to raise any dispute on behalf of the workmen. He submitted that in the above circumstances the authority of the union to raise the dispute on behalf of the workmen is proved. Adv. Shri B. G. Kamat, representing the employer submitted that no evidence has been produced by the union to show that it has the authority to represent the workmen and raise the dispute on their behalf. He submitted that no resolution has been produced by the union to show that any resolution was passed in the general body meeting of the union for taking up the cause of the 16 workmen. He relied upon the award dated 16-2-98 passed by this Tribunal in reference number 9/75 on the issue of the proving of the authority by the union for espousing the dispute of the workmen.

7. One of the contentions which has been raised by Adv. Shri Devari, representing the union is that since the employer participated in the conciliation proceedings without raising any objection as regards the authority of the union to raise the dispute on behalf of the workmen, the employer cannot be permitted now to raise such objection in the proceedings before this Tribunal. I do not agree with this contention of Adv. Shri Devari. The Bombay High Court in the case of Iqbal Ahmed Kamrudin v/s T. L. Muzamdar reported in 1992 (64) FLR 827 in para. 8 of its judgment has held as follows:

> "If what is referred to a Tribunal/Labour Court is not an industrial dispute, it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an industrial dispute, is in reality not an industrial dispute at all. This has always been recognised as an exception to the general rule postulated in Sec. 10(4). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred is an industrial dispute at all and there can be no question of the Tribunal being bound by the order of the reference. It is a settled law that the appropriate Government makes a reference upon the prima facie view of the matter as to the existence or apprehension of an Industrial Dispute; it is open to the parties to show that what is referred is not in reality an Industrial Dispute at all".

The Calcutta High Court in the case of Deepak Industries Ltd., and another v/s State of West Bengal, reported in 1975 Lab. I.C 1153 has held that mere negotiations by some officials of the union with the employers for conciliation or executing certain documents on behalf of the workmen prior to reference are no conclusive proofs of the authority of the Union to represent the workman whose dispute it is espousing before the Tribunal. The above judgments therefore makes it clear that the employer is entitled to raise an objection that the dispute referred is not an industrial dispute even after the reference is made by the Government and the mere fact that the employer participated in the conciliation proceedings or did not raise any objection during the conciliation proceedings does not bar the employer from raising the objection before the Tribunal in a reference that the union has no locus standi to raise the dispute and hence there is no industrial dispute. In the circumstances, I hold that there is no substance in the contentions raised by Adv. Shri Devari.

8. The contention of the employer is that the reference is not maintainable because the union, that is, Gomantak Mazdoor Sangh has no authority, locus

standi to raise the dispute on behalf of the workmen and hence there is no industrial dispute. Industrial dispute envisages a collective dispute. Unless there is an industrial dispute, the reference is not maintainable, but the exception to this is Sec. 2A of the Industrial Disputes Act. The said Section contemplates individual dispute as an industrial dispute when a workman is discharged, dismissed, retrenched or his services are terminated by the employer. In the present case dispute which has been referred by the Government is two fold. One is regarding the payment of the full wages to the 16 workmen named in the reference for the period 29-4-91 which is a collective dispute and falls outside the scope of Sec. 2A of the Industrial Disputes Act, 1947 and the other regarding the termination of the service of the said 16 workmen with effect from 7-5-92; Admittedly the regarding termination of service has not been raised by the workmen individually, that is, by themselves but it is raised by Gomantak Mazdoor Sangh, which means that the dispute is raised by the union on behalf of the workmen. If the dispute was raised by the workmen themselves as regards termination of their service, it would have deemed to be an industrial dispute and the reference of the dispute by the Government would be valid. But if the dispute is raised by the union and the employer challenges its authority to raise the dispute, the union must prove its authority by producing some material evidence before the Tribunal. The Calcutta High Court in the case of Deepak Industries Ltd., v/s State of West Bengal reported in 1975 Lab. IC 1153 relying on the judgment of the Supreme Court in the case of The Bombay Union of Journalists and others v/s The "Hindu", Bombay and another reported in AIR 1963 SC 318, in para. 7 of its judgment has held as follows:

> "The amended Sec. 2A makes it clear that when an individual dispute is not sponsored by other workman or espoused by the Union of the workman, even then, it would be deemed to be an industrial dispute within the meaning of the Act. Inspite of the said amendment which brings in individual disputes within the scope of the Act, it has not made any difference on the principles as to what would constitute an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute, that is a dispute raised by an individual, it must be raised by him and the reference may be in due course for adjudication under the said Act. On the other hand, if a group of workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act which may be referred to the Tribunal in due course. But, when the dispute is espoused or sponsored by an Union, it seems to have been uniformly held by the judicial decisions which have been referred to by the parties and mentioned hereinbefore that when the authority of the Union is challenged by the employer it must be proved by the production of material evidence before the Tribunal to which such a dispute has been referred that the union has been duly authorised either by a resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said Union is registered under the India Trade Union Act is not conclusive proof of its real existence or the authority to represent the workman in the reference before the Tribunal..."
>
> "... It is immaterial whether the said Union is a general Union of the workman of a particular industry or it is a Union of the particular establishment relating to which the dispute has been arisen between it and its workman. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference, the dispute was taken up or supported by the Union of the workman of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workman."
>
> "Therefore, after the introduction of Sec. 2A, the dispute of discharged, dismissed or retrenched workman can be raised by the workman himself or it can be raised by the workmen of the establishment or by the Union. But, when such a dispute is raised by the workmen himself, the dispute is between the individual workman and the employer and when it is raised by the workmen or the union, the dispute is between the workmen of the establishment as a class and the employer and in such a case, the workmen collectively are the party to the dispute and not the workmen individually. Further, when the dispute is not raised by the workman himself but is raised by the Union, if the authority of the union is challenged, such authority is to be proved by producing material evidence before the Tribunal. If the dispute is raised by the union of the workman of the establishment itself, the presumption is that the workman of the establishment have community of interest with the individual employee who is their fellow workman. But the question is different when the dispute is raised by an union which is not of the workmen of the establishment, but by a general union of which the workmen of a particular establishment becomes its members. In such a case, community of interest is to be proved. Such a union must have a representative character, so as to make a dispute an industrial dispute."

9. In the present case as mentioned earlier, the dispute of payment of full wages and refusal of employment to the workmen is raised by the union and not by the workmen themselves. This is an admitted fact. The statement of claim is filed by Shri P. Gaonkar, the General Secretary of the union, which is not the union of the workers of the establishment but which is a general union. Though the employer in the cross examination of the union's witness Shri P. Gaonkar denied that the 16 workmen who are the parties to the present reference

were not the members of union, that is, Gomantak Mazdoor Sangh in the year 1990 and suggested that the receipt book Exb. E-1 has been prepared or manufactured to create evidence, the employer's witness Shri Sandeep Sardessai, the Director, has admitted in his deposition that in the year 1990, about 16 workers withdrew their membership from GTCWU (Goa Trade and Commercial Worker's Union) and joined Gomantak Mazdoor Sangh. He also stated that the employer had employed about 24 employees. Thus there is an admission from the employer that out of 24 workers working with the employer 16 workers were the members of Gomantak Mazdoor Sangh. The present dispute which has been raised by the union is on behalf of these 16 workers. The Supreme Court in the case of workmen of M/s. Dharampal Premchand (Saugandhi) V/s M/s. Dharampal Premchand (Sangandhi) reported in AIR 1966 SC 182 has held that when the workmen of an establishment have no union of their own, some or all of them may join the union of another establishment belonging to the same industry and such an union may take up the cause of a workman working in the establishment and it would be an industrial dispute. The Supreme Court has further held that this union should have a representative character vis-à-vis the employees employed in the establishment of the employer, that is, as appreciable workmen from the concerned establishment must have joined the said union. In the present case since 16 out of 24 workers were the members of Gomantak Mazdoor Sangh, the said union had the representative character. The Madras High Court in the case of Nellai Cotton Mills, V/s Labour Court reported in 1965 I LLJ 95 has held that in the case of espousal of dispute by a union, it is not sufficient that the union had in its membership a substantial number of workmen from the establishment in which the concerned workmen were employed. The High Court held that it must further be shown that a substantial number of such workmen participated in or acted together and arrived at an understanding by a resolution or by other means and collectively supported the dispute. In the case of the workmen of Indian Express Newspaper (P) Ltd. V/s The Management of Indian Express Newspapers Pvt. Ltd., reported in AIR 1970 SC there were two resolutions which were passed. One passed in the meeting of the 17 working Journalist of the company who had become the members of Delhi union of journalist and the other resolution passed by the executive committee of the Delhi union of journalists which stated that after considering the representation made to it by the employees of the Indian Express decided to take up the cause of the two workmen and authorized the office bearers of the union to initiate the necessary proceedings.

10. In the present case Shri P. Gaonkar, the General Secretary of the union stated in his cross examination that no resolution book is maintained by the union as it is a general union. He stated that he does not remember as to how many were the members of the union in the year 1992. Though he stated that he can produce the annual return showing the total members of the union for the year 1992 and the opportunity was given to him to do so, he did not produce the same on the ground that the same is not traceable, the records being old. He stated that the members of the committee are elected in the general body meeting, and that he can produce the resolution passed by the general body in the meeting held in the year 1992. However, though opportunity was given to him, he did not produce the said resolution on the ground that it is not traceable as the records are old. The production of this resolution was required as in the written statement the employer had challenged the authority of Shri P. Gaonkar to sign the statement of claim on behalf of the union or the workmen, and therefore the burden was on the union to prove that Shri P. Gaonkar was the General Secretary of the union and had the authority to sign the claim statement. Also there is no evidence from the union in the form of resolution or otherwise to show that the workmen had authorized the union to espouse their cause by raising the dispute. The union had taken the stand in the rejoinder filed at Exb. 6 that the workmen had authorized the union to represent them. However, no such authorization has been produced by the union. There is also no document in the form of resolution or otherwise to show that the office bearers of the union were authorized to take up the cause of the workmen. This was required because Gomantak Mazdoor Sangh is a General union and not the union of the establishment of the employer. In the circumstances, it cannot be held that the union namely Gomantak Mazdoor Sangh could represent the workmen or that it had the locus standi or authority to espouse the cause of the workmen. This being the case the reference made by the Government is bad in law, and hence the same is liable to be rejected. I therefore hold that the union has failed to prove that it has the authority to espouse the cause of the workmen and hence, I answer the issue No. 1 in the negative.

11. *Issue Nos. 2, 3, 4 and 5:* Once it is held that the reference made by the Government is bad in law and the same is liable to be rejected I hold that the question of deciding whether the workmen are entitled to full wages during the period 29-4-91 to 6-5-92 or whether the termination of service of the workmen with effect from 7-5-92 by the employer is illegal and unjustified or whether the establishment of the employer is permanently closed from June, 1994 does not arise. I therefore answer the issue Nos. 2, 3, and 4 accordingly. Similarly, once it is held that the reference is bad in law and is liable to be rejected, no relief can be granted to the workmen. I therefore answer the issue No. 5 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the union namely the Gomantak Mazdoor Sangh had no locus standi or authority to espouse the dispute on behalf of the workmen and hence

there was no industrial dispute. It is hereby further held that the reference made by the Government is bad in law and hence rejected.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 30-05-2005 in reference No. IT/104/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 6th July, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/104/99

Workman, Shri Vasudev G. Gaude,
Rep. By
The President,
Goa Trade & Commercial
Workers Union,
Velho Bldg., Panaji-Goa. ... Workman/Party I

V/s

M/s. Devshee Farm,
Plot No. A.B.C.
Village Singane,
Valpoi, Satari, Goa. ... Employer/Party II

Workman/Part I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Exparte.

Panaji, dated: 30-05-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2-9-99 bearing No. IRM/CON/ /MAP/(108)/98/4258 referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Devshee Farm, Valpoi, Satari, Goa in refusing employment to Shri Vassudev G. Gaude, Security Watchman, with effect from 20-11-1997, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/104/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the workman/Party I put in his appearance and filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman/Party I (for short workman) are that he was employed with the employer/ /Party II (for short 'employer') as a Security Watchman, on monthly salary of Rs. 900/-, at the farm situated at Plot No. A.B.C., Village Singane, Valpoi, Satari, Goa. That the employer is engaged in the business of production of Agricultural produce, supply of agricultural saplings and supplies other kinds of farm products. That besides the workman, the employer also engaged other workmen for carrying out day to day agricultural operations at the farm. That suddenly on 20-11-97 the workman was refused employment without assigning any reason. That the workman immediately by letter dated 11-12-1997 informed the Labour Commissioner that the employer had refused employment to him and sought his intervention. That thereafter by letter dated 11-12-97 the union raised the dispute with the employer demanding reinstatement of the workman and the copy of the said letter was marked to the Labour Commissioner, Mapusa, who intervened in the matter and admitted the same in the conciliation. That the Asst. Labour Commissioner sent several notices to the management asking to attend the conciliation proceedings. However, inspite of the said notices, the management did not attend the conciliation proceedings and as such the matter ended in failure and the failure report was submitted to the Government by the Labour Commissioner. The workman contended that the refusal of employment is illegal and bad in law and is in contravention of Section 25F of the Industrial Dispute Act, 1947. That prior to refusal of employment to him he was not given opportunity of being heard nor any inquiry was conducted against him nor he was issued any warning memo, show cause notice or charge sheet. The workman contended that the refusal of employment to him by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages and continuity in service.

3. The A.D. card in respect of the registered A.D. notice dated 5-10-99 issued to the employer was not received by the office of this Tribunal and therefore a fresh notice dated 19-11-1999 was issued to the employer. The A.D. card in receipt of the said notice was also not received nor the notice which was sent by

registered post was returned back to this Tribunal by the postal authorities. Therefore another notice dated 1-2-2000 was issued to the employer which was returned unserved with postal endorsement "incomplete address". Thereafter an application was filed by the workman giving the residential address of the managing director of the employer and prayed that notice be issued on the said address. Accordingly, the registered A.D. notice was issued on the address given by the workman but the same was also returned "unserved". The workman thereafter filed an application dated 4-8-2000 praying that he be allowed to publish the notice in the local daily newspapers and the said application was granted. Accordingly the notice dated 8-8-2000 was published in the newspapers "Sunaprant" dated 18-8-2000 and the "Gomantak Times" also dated 18-8-2000. As per the said notice the employer was asked to appear before this Tribunal on 4-9-2000 at 10.00 a.m. Inspite of the said notice none appeared on behalf of the employer and therefore the case was ordered to proceed exparte against the employer and thereafter the case was fixed for recording exparte evidence of the workman and accordingly exparte evidence of the workman was recorded.

4. In support of his case the workman examined himself. In his deposition he stated that he was working with the employer from 17-1-1990 as a Watchman and along with him there were about another 12 persons who were working with the employer. He stated that all the workers had passed a resolution on 23-11-97 to become the member of Goa Trade and Commercial Workers Union and the union by letter dated 26-11-97 informed the employer that its workers had become the members of the said union and along with the said letter the copy of the resolution was also sent. He produced the copy of the said letter along with the resolution and the A.D. card at Exb. W-1 colly. He identified his signature on the resolution at point 'A'. He stated that the employer terminated his services by refusing employment to him from 20-11-99 and that his monthly salary was Rs. 900/- per month. He stated that he raised a dispute before the Asstt. Labour Commissioner, Mapusa regarding refusal of employment to him and since the employer did not participate in the conciliation proceedings the same ended in failure. He produced the minutes of the meeting dated 25-9-98 held by the Asstt. Labour Commissioner, Mapusa, wherein failure is recorded at Exb. W-2. He stated that he was being paid monthly salary in cash and that none of the workers including him were given appointment letters by the employer. He stated that before terminating his services he was not given any notice nor he was paid notice pay nor retrenchment compensation. He stated that he worked continuously from the date of his employment till the date he was refused employment from 20-11-97. He stated that refusal of employment to him by the employer is illegal and unjustified as such he is entitled to reinstatement in service with full back wages and continuity in service.

5. As mentioned earlier, the case has proceeded exparte against the employer as inspite of the opportunity given, the employer did not participate in the proceedings and as such the evidence of the workman has gone unchallenged. The workman has stated in his disposition that he was not issued letter of appointment and his monthly salary was being paid in cash. He has produced the registered A.D. letter sent by the Goa Trade and Commercial Workers Union to the employer as also the resolution passed by the workers of the employer in meeting held on 23-11-97 Exb. W-1 colly. He has also produced the A.D. card at Exb. W-1 colly which shows that the said letter dated 26-11-97 of the union was received by the employer. The said resolution is signed by the workers of the employer and the name of the workman figures at Sr. No. 10 and he has identified his signature at point 'A' on the said resolution. This finds support in the contention of the workman that he was employed with the employer. The workman has stated in his deposition that he was refused employment by the employer from 20-11-97 and at the time of refusal of employment to him he was not given notice nor he was paid notice pay nor retrenchment compensation. His contention is that the refusal of employment to him is in violation of the provisions of Sec. 25 F of the Industrial Disputes Act, 1947. Sec. 25F comes into play only if the termination of service amounts to retrenchment. Refusal of employment puts the services of the workman to an end which in other words means that his services stand terminated. Thus, the refusal of employment is another form of termination of service. Therefore it is to be seen whether the termination of service of the workman by the employer amounts to retrenchment. "Retrenchment" is defined in Sec. 2(oo) of the Industrial Disputes Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The exception laid down under section 2(oo) of the Act, are (a) voluntary retirement of the workman or (b) retrenchment of the workman at reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or (bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained there in or (c) termination of service of a workman on the ground of continued ill-health. In the present case the termination of service of the workman was not as a matter of punishment inflicted by way of disciplinary action. The workman's case also does not fall within the exceptions laid down under Sec. 2(oo) of the Industrial Disputes Act, 1947. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in 1980 II LLJ 72 has held that every type of termination of service of a workman except of the types specifically excepted amounts to retrenchment. Therefore in my view the termination of services of the workman by way of refusal of employment to him amounts to retrenchment as defined under Sec. 2(oo) of the Industrial Disputes Act, 1947.

10. Sec. 25F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provision the services of the workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages for each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25B(2) of the Industrial Disputes Act, 1947 defines continuous service. As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case.

6. In the present case the workman admittedly was not employed below ground in a mine. The workman has stated in his evidence that he was employed has a Watchman from 17-1-90. This statement of the workman has not been challenged. As mentioned earlier inspite of the opportunity given there is no participation in the proceedings from the employer and that the employer has allowed the case to proceed exparte against it. There is also no challenge to the statement of the workman that he was refused employment by the employer from 20-11-97. The employer did not even participate in the conciliation proceedings though opportunity was given. It is therefore established that the workman had worked with the employer for more than 240 days prior to the termination of his services and therefore the provisions of Sec. 25 F applied to the workman. The workman has stated in his evidence that he was not given one months notice nor he was paid notice pay in lieu of notice nor he was paid retrenchment compensation. There is no denial of this statement of the workman from the employer nor there is evidence to the contrary. And therefore it is held that there is no compliance of Sec. 25 F of the Industrial Dispute Act, 1947 from the employer. The Supreme Court in the case of M/s. Avon Service Productions Agency Pvt. Ltd., V/s Industrial Tribunal, Haryana and others reported in AIR SC 170 has held that giving of notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply to the same renders the order of termination invalid and inoperative. The same principles are laid down by the Supreme Court in the case of Gammon India Ltd., V/s Niranjan Das reported in (1984) I SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisite of Sec. 25F, the retrenchment brings about termination would be void-ab-initio. Since in the present case the services of the workman were terminated by refusing employment to him in violation of the provisions of Sec. 25 of the Act, in view of the law laid down by the Supreme Court in the case of M/s. Avon Services Production Agencies (Supra) and Gammon India Ltd., (Supra) the refusal of employment to the workman by the employer becomes illegal and unjustified. I therefore hold that the workman has succeeded in proving the refusal of employment to him by the employer with effect from 20-11-97 is illegal and unjustified.

7. Now the question is what relief should be granted to the workman. The Bombay High Court in the case of Sayyed Anwar V/s Divisional Controller, MSRTC Aurangabad and others reported in 2000 (2) Bom. L C 388 has held that it is well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper the normal relief of reinstatement with full back wages must follow unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. Therefore the normal rule is that when the termination of service of the workman is held to be illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity in service unless there are reasons which do not warranty reinstatement or full back wages and this reasons should be just and reasonable. In the present case there is nothing on record to show that the past service records of the workman were not good or satisfactory nor there is any other evidence on record, which disentitles the relief of reinstatement with full back wages to the workman. In the circumstances, I hold that the workman is entitled to reinstatement in service with full back wages and of consequential benefits with continuity in service. I therefore pass the following order.

ORDER

It is hereby held that the action of the management M/s. Devshee Farm, Valpoi, Satari, Goa, in refusing employment to the workman Shri Vasudev G. Gaude, Security Watchman, with effect from 20-11-97 is illegal and unjustified. The workman Shri Vasudev G. Gaude is ordered to be reinstated in service with full back wages and other consequential benefits with continuity in service.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 30-06-2005 in reference No. IT/4/93 is hereby published as required

by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 22nd July, 2005.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/4/93

Shri Shashikant K. Talekar,
C/o General Secretary,
All Goa Co-operative Workers Union,
Opp. Konkan Tours & Travels,
1st Floor, 31st January Road,
Panaji-Goa. ... Workman/Party I

V/s

The Chairman,
M/s. Goa Bagayatdar Sahakari,
Kharedi Vikri Society Ltd.,
Bagayatdar Bhawan,
Ponda-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri D. P. Bhise.

Employer/Party II - Represented by Adv. Shri A. Nigalye.

Panaji, dated: 30-6-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by order dated 17-12-1992 bearing No. 28/62/92-Lab referred the following dispute for adjudication of this Tribunal.

"(1) Whether the action of the management of M/s. Goa Bagayatdar Sahakari Kharedi Vikri Society Ltd., Ponda, Goa, in terminating the services of Shri Shashikant Keshav Talekar, Clerk, with effect from 17-6-1992 is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/4/93 and registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short 'workman') filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (for short 'employer') as a clerk on 3-3-98. That he is a member of All Goa Co-operative Workers Union. That after he joined the above union the employer started harassing him along with others who took part in the activities of the union. That the union submitted charter of demands to the employer in or around 19-9-1990 and on failure by the employer to settle the demands, the union raised Industrial dispute before the Labour Commissioner, Panaji. That the employer showed adamant attitude in the course of the conciliation proceedings towards the workers and as such the organizational movement of the workers gained momentum to fight injustice and during this period somewhere in November, 1990 the employer refused employment to four of its employees who were the members of the union which resulted in token demonstration on 26-11-1990 in response to the call given by the union and the workman also participated in the said demonstration. That the workman was suspended out of vengeance by order dated 5-12-1990 and there after he was served with a charge sheet dated 7-3-1991 and enquiry was conducted. That the workman requested for permission to engage legal practitioner to defend him but the same was refused by the Inquiry Officer at the instance of the employer and the enquiry was completed without giving any assistance to the workman. That the Inquiry Officer submitted his report dated 21-9-91 and the workman was asked to submit his explanation and accordingly reply dated 25-10-91 was submitted and it was requested that lenient view may be taken as most of the charges were not proved in the enquiry. That thereafter the workman received another letter dated 5-12-1991 calling for explanation on the proposed penalty of termination and the workman submitted his representation dated 10-12-1991. That the employer terminated his services by order dated 17-6-1992 with one months notice pay. The workman contended that the termination of his service is illegal, arbitrary and bad in law. The workman contended that the enquiry conducted against him is not fair and proper and the findings of the Inquiry Officer are perverse. The workman contended that the penalty of termination imposed on him is disproportionate to the charges alleged against him. The workman prayed that the termination order be set aside and the employer be directed to reinstate him in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that this Tribunal has no jurisdiction to decide the reference because the employer is not an Industry within the meaning of Section 2(J) of the Industrial Dispute Act, 1947 nor its establishment is an Industrial establishment within the meaning of Section 2(K) of the said act. The employer stated that a charge sheet dated 7-3-1991 was issued to the workman because he had committed certain acts of misconduct. The employer stated that enquiry into the said charges was conducted and the workman was given full opportunity to defend himself in the enquiry. The employer stated that after concluding of the enquiry, the Inquiry Officer

submitted his report to the employer holding that some of the charges against the workman were proved. The employer stated that the Board of Directors found that the acts of misconduct which were proved against the workman were subversive of discipline and good behaviour and also the workman had not furnished fresh service bond after the cancellation of the earlier service bond and considering the above facts the board decided to terminate the services of the workman which was done by letter dated 17-6-1992. The employer denied that the termination order dated 17-6-1992 is malafide or arbitrary or bad in law or made to victimize the workman. The employer denied that the penalty imposed upon the workman is not commensurate with the gravity of the misconduct. The employer stated that the termination of the services of the workman is legal and justified and the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 6 and the issue No. 1 was treated as preliminary issue as it was relating to the fairness of the enquiry conducted against the workman. After recording the evidence of the parties on the preliminary issues by findings dated 12-6-1995 this Tribunal held that the domestic enquiry held against the workman is fair and proper and as such the issue No. 1 stood disposed off. Thereafter the case was fixed for recording the evidence of the parties on the remaining issues. Accordingly the parties led evidence of the remaining issues and the case was fixed for hearing final arguments. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 24-6-2005 for filing the terms of settlement. On this date the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 24-6-2005 at Exb. 25. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 24-6-2005 which are duly signed by the parties and I am satisfied with the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 24-6-2005 Exb 25.

ORDER

1. The Party II shall pay to the Party I a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) in full and final settlement of his claim in Reference No. IT/04/93 pending in the Hon'ble Industrial Tribunal, Government of Goa at Panaji, Goa.

   Out of the said sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) the Party II shall draw a cheque of Rs. 15,000/- (Rupees fifteen thousand only) on behalf of Party I to Shri D. P. Bhise, Advocate towards his legal fees payable to him by the Party I and hand over the said cheque to Shri D. P. Bhise. The Party II shall pay the remaining amount of Rs. 1,35,000/- (Rupees one lakh thirty five thousand only) to Party I.

2. The Party I and Shri D. P. Bhise shall issue receipt to the Party II in acknowledgment of having received the said sum of Rs. 1,35,000/- (Rupees one lakh thirty five thousand only) and Rs. 15,000/- (Rupees fifteen thousand only).

3. Party I hereby agrees and declares that all his disputes, in Reference No. IT/04/93 have been conclusively settled with the signing of these consent terms and Party I has no further claim or demand against the Party II of any nature whatsoever.

4. The Parties agree to file these consent terms in the Hon'ble Industrial Tribunal, Government of Goa at Panaji Goa in Reference No. IT/04/93 with request to pass consent award in terms thereof.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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